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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/938,533   | 08/27/2001  | Gerd M. Muller       | 740105-78           | 2799             |
| 7590   | 10/04/2005  |                      | EXAMINER            |                  |
| NIXON PEABODY LLP<br>401 9TH ST. N.W. SUITE 900<br>WASHINGTON, DC 20004-2128 |             |                      | FOREMAN, JONATHAN M |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3736                |                  |
| DATE MAILED: 10/04/2005  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                     |               |
|------------------------------|---------------------|---------------|
| <b>Office Action Summary</b> | Application No.     | Applicant(s)  |
|                              | 09/938,533          | MULLER ET AL. |
|                              | Examiner            | Art Unit      |
|                              | Jonathan ML Foreman | 3736          |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 – 9 and 11 - 22 is/are pending in the application.
- 4a) Of the above claim(s) 8, 9, 12 - 18 and 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 – 7, 11 and 19 – 22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

New grounds of rejection are contained within this Office Action. Accordingly this action has been made Non-Final.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 7, 11 and 19 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,788,711 to Lehner et al.. in view of U.S. Patent No. 6,517,476 to Bedoya et al. In reference to claims 1 – 7, 11 and 19 - 22, Lehner et al. discloses a partially implantable hearing system (Figure 1) comprising an electromechanical output transducer (6) selected from the group consisting of electromagnetic, electrodynamic, magnetostrictive, dielectric and piezoelectric transducers (Col. 8, lines 21 - 38); a micromanipulator (1) attached to a cranial vault (Col. 6, lines 24 – 26) for rotationally and axially positioning the transducer and for fixing the transducer in a set position (Col. 6, lines 41 - 53); a releasable coupling unit disposed between the transducer and the micromanipulator (Col. 7, lines 26 - 31). The releasable coupling comprises a transducer-side coupling element (15) and a micromanipulator-side coupling element (14) being adapted to selectively engage each other and disengage from each other. The micromanipulator-side coupling element receives the transducer-side coupling element and is axially symmetrical with respect to an axis of the transducer (Figure 3). At least one of the coupling elements is partially made of an elastic, soft polymeric material (Col 7, line 29). The releasable coupling unit enables the replacement

of the transducer while maintaining the position set by the micromanipulator. Lehner et al. discloses a releasable coupling unit where the micromanipulator-side coupling element defines a rigid annular receiver and the transducer-side coupling element is at least partially elastic (Col. 7, lines 26 – 31). However, Lehner et al. fails to disclose the releasable coupling being a snap-in coupling. Bedoya et al. discloses a connector for an implanted hearing system (See Abstract) wherein the releasable coupling is a snap-in coupling having a rigid annular receiving member, and the coupling element is a soft polymeric material (Col. 2, line 40) and adapted to snap into the rigid annular receiver member in a substantially axial direction (Figure 3; Col. 7, lines 1 – 5; Col. 8, lines 56 – 63). It would have been obvious to modify the releasable coupling unit as disclosed by Lehner et al. to include a snap-in configuration as taught by Bedoya et al. in order to facilitate sealable interconnection (Col. 6, lines 65 – 67) and selective interconnection (See Abstract) between the micromanipulator and the transducer.

***Response to Arguments***

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

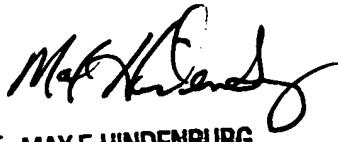
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMLF

  
MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
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